

**Bureau of Indian Affairs, Interior**

**§ 162.550**

**WSR LEASE MONETARY COMPENSATION  
REQUIREMENTS**

**§ 162.549 How much monetary compensation must be paid under a WSR lease of tribal land?**

(a) A WSR lease of tribal land may allow for any payment negotiated by the tribe, and we will defer to the tribe and not require a valuation if the tribe submits a tribal authorization expressly stating that it:

(1) Has negotiated compensation satisfactory to the tribe;

(2) Waives valuation; and

(3) Has determined that accepting such negotiated compensation and waiving valuation is in its best interest.

(b) The tribe may request, in writing, that we determine fair market rental, in which case we will use a valuation in accordance with § 162.551. After providing the tribe with the fair market rental, we will defer to a tribe's decision to allow for any payment amount negotiated by the tribe.

(c) If the conditions in paragraph (a) or (b) of this section are not met, we will require that the lease provide for fair market rental based on a valuation in accordance with § 162.551.

**§ 162.550 How much monetary compensation must be paid under a WSR lease of individually owned Indian land?**

(a) A WSR lease of individually owned Indian land must require payment of not less than fair market rental before any adjustments, based on a fixed amount, a percentage of the projected gross income, megawatt capacity fee, or some other method, unless paragraphs (b) or (c) of this section permit a lesser amount. The lease must establish how the fixed amount, percentage or combination will be calculated and the frequency at which the payments will be made.

(b) We may approve a lease of individually owned Indian land that provides for the payment of nominal compensation, or less than a fair market rental, if:

(1) The Indian landowners execute a written waiver of the right to receive fair market rental; and

(2) We determine it is in the Indian landowners' best interest, based on factors including, but not limited to:

(i) The lessee is a member of the immediate family, as defined in § 162.003, of an Indian landowner;

(ii) The lessee is a co-owner of the leased tract;

(iii) A special relationship or circumstances exist that we believe warrant approval of the lease;

(iv) The lease is for public purposes; or

(v) We have waived the requirement for a valuation under paragraph (e) of this section.

(c) We may approve a lease that provides for the payment of less than a fair market rental during the periods before the generation and transmission of electricity begins, if we determine it is in the Indian landowners' best interest. The lease must specify the amount of the compensation and the applicable periods.

(d) We will require a valuation in accordance with § 162.422, unless:

(1) 100 percent of the landowners submit to us a written request to waive the valuation requirement; or

(2) We waive the requirement under paragraph (e) of this section; or

(3) We determine it is in the best interest of the Indian landowners to accept an economic analysis in lieu of an appraisal and:

(i) The Indian landowners submit an economic analysis that is approved by the Office of Indian Energy & Economic Development (IEED); or

(ii) IEED prepares an economic analysis at the request of the Indian landowners.

(e) If the owners of the applicable percentage of interests under § 162.011 of this part grant a WSR lease on behalf of all of the Indian landowners of a fractionated tract, the lease must provide that the non-consenting Indian landowners, and those on whose behalf we have consented, receive a fair market rental, as determined by a valuation, unless we waive the requirement because the tribe or lessee will construct infrastructure improvements on, or serving, the leased premises, and we determine it is in the best interest of all the landowners.